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CURRENT TOPICS

Legal Aid and Costs of Appeals

IN dismissing an appeal brought by an assisted person under the Legal Aid Scheme on 2nd March (*The Times*, 3rd March), the Court of Appeal (the LORD CHIEF JUSTICE and SINGLETON and DENNING, L.JJ.) observed that the result of the case, since the appellant was at the time of the appeal an assisted person against whom no contribution towards costs had been ordered, was that the State paid his costs and that the successful defendants could not recover theirs from anyone. Lord Goddard added that the defendants had had the privilege of paying for the transcript of the shorthand note at a cost of over £100. Later in the day officials of The Law Society and the Legal Aid Committee attended the court at the Lord Chief Justice's request. The Lord Chief Justice said that he hoped that the committee would realise that they would have to consider in every case whether it was a proper case in which to grant legal aid in the Court of Appeal. He added: "We do not underestimate the committee's difficulties, Parliament has put a very difficult task on the committee. It seems to me that in many cases before the court there has been nothing at all in the appeal and several appeals have been dismissed without counsel for the respondents being called on. I think that it would be desirable for the committee to see a transcript of the shorthand notes of the judgment if possible. We think it desirable to say that experience of the working of the Legal Aid Act has shown that the authority which makes rules under the Act should consider, if it is possible to do so under the Act, whether the same procedure should not obtain now as obtained before the Act was passed, namely, that, before an assisted person can appeal, leave should be obtained from the trial judge or the Court of Appeal, so that the court may be satisfied that there is an appealable point."

Emergency Civil Aid Certificates

A POINT of some importance to certifying committees was also decided by the Court of Appeal on 6th March (*The Times*, 7th March) in relation to the subsequent issue of a definitive civil aid certificate where an emergency certificate has previously been issued. In the case in point an emergency certificate had been issued on 7th November, 1950, and expired on 6th February, 1951. The purported definitive certificate under reg. 10 (9) of the Legal Aid (General) Regulations, 1950, was issued on 18th February, 1951, and in conformity with reg. 10 (10) bore the date 7th November, 1950. It was thus issued after the emergency certificate had expired. The Court of Appeal (the MASTER OF THE ROLLS and JENKINS and HODSON, L.JJ.) held that no definitive certificate could issue bearing the date of the original emergency certificate unless it was issued while the emergency certificate was still alive. The appellants in the case before the court must therefore be deemed never to have been assisted persons. It may be noticed that under reg. 10 (9) the period for which an emergency certificate is to remain in force varies between six weeks and three months at the discretion of the local

CONTENTS

PAGE

CURRENT TOPICS:
- Legal Aid and Costs of Appeals 145
- Emergency Civil Aid Certificates 145
- Counsel's Fees in Legal Aid Cases 146
- Instructions to Sue for Gaming Debt .. 146
- Solicitors' Undertakings 146
- The Oxford Union and Respect for Law .. 146

CONNIVANCE 147

COSTS:
- Incidence of Liability—II 148

A CONVEYANCER'S DIARY:
- Defence Regulations 149

LANDLORD AND TENANT NOTEBOOK:
- Non-Agricultural Part of Holding Again .. 150

PRACTICAL CONVEYANCING—XXX:
- Indorsements on Grants of Representation 152

HERE AND THERE 152

CORRESPONDENCE 153

REVIEWS 154

NOTES OF CASES:
- Alexander *v.* Springate (*Rent Tribunal: Notice to Quit between Reference and Decision*) 156
- Bailey, *In re*; Barrett *v.* Hyder (*Will: Contingent Gifts: Gap: Intestacy*) 155
- Conway *v.* George Wimpey & Co., Ltd. (No. 2) (*Negligence: Lift Given by Contractors' Lorry*) 156
- Cummings *v.* London Bullion Co., Ltd. (*Contract: Devaluation of £*) 157
- Patel *v.* Willis (*Restrictions on Export: Meaning of "Supply"*) 157
- Read's Trustee in Bankruptcy *v.* Smith (*Debt: Payment into Court: Judgment for Larger Sum: Costs*) 156
- Reading *v.* A.-G. (*Master and Servant: Claim to Money Obtained as Servant*) 155
- Wilcox *v.* Jeffery (*Aiding and Abetting: Illegal Performance: Presence of Journalist*) 157

SURVEY OF THE WEEK:
- House of Lords 158
- House of Commons 158
- Statutory Instruments 159

OBITUARY 159

NOTES AND NEWS 160

SOCIETIES 160

PROBATE PRACTICE 160

committee, and in the case in question the emergency certificate had enjoyed its maximum duration of three months. The brief report available gives no indication of the circumstances resulting in failure to issue a definitive certificate within that time, which was evidently considered by the framers of the regulations to be ample for the purpose. If in fact circumstances may occur in which the time allowed is insufficient, it is obvious that injustice to assisted persons may result, and the regulations may require amendment.

Counsel's Fees in Legal Aid Cases

THE practice in relation to the taxing of counsel's fees in legal aid cases has been agreed, according to the March issue of the *Law Society's Gazette*, between the Council of The Law Society, the Bar Council and the Supreme Court Taxing Office. Items in respect of counsel's fees should be inserted in a bill of costs in accordance with a note of fees rendered by counsel to the instructing solicitor after the work to which the fees relate has been completed. Counsel is at liberty to supply to the instructing solicitor, for the use of the taxing master, a memorandum about any factors in relation to the case which affect the amount of the fees for which counsel has asked, and should, as a matter of courtesy, supply a memorandum to the taxing master, if so requested by him. The instructing solicitor should use his best endeavours to secure the allowance on the taxation of a proper fee for counsel. If the instructing solicitor feels unable to support before the taxing master the amount of the fees for which counsel asks, the instructing solicitor should inform counsel beforehand. Counsel's fees, it is emphasised, are paid out of the Legal Aid Fund, and cannot be paid until the solicitor's bill of costs has been taxed or assessed by the area committee under reg. 18 (2) of the Legal Aid (General) Regulations, 1950. It will greatly assist the work of area committees and of the Society's Legal Aid Accounts Department, it is added, if solicitors will attach counsel's fee notes to the copies of their taxed bills when passing them to area committees for payment.

Instructions to Sue for Gaming Debt

WHAT is the duty of a solicitor on receiving instructions to sue in respect of a gaming debt? Since *Hill v. Hill* [1949] A.C. 530 it is no longer possible to succeed on an allegation of consideration, such as a promise not to report default to a union or sporting organisation, and apart from limited classes of cases in which gaming debts are indirectly enforceable, as in the case of loans to pay betting losses already incurred, it would seem to be impossible to give full particulars on a writ of a gaming debt without disclosing that there is no cause of action. The LORD CHIEF JUSTICE expressed the opinion, in giving evidence before the Royal Commission on Betting in June, 1950, that it was a contempt of court to endorse a writ for a gaming debt as for "an account stated." He added that if such a writ came before him again he intended "to have steps taken so that the matter may be brought before the court and judgment given as to whether it is contempt or not." Presumably if this were contempt it would be equally contempt to endorse the writ for money due under "contracts." The Council of The Law Society have expressed the opinion, in the March issue of the *Law Society's Gazette*, that, in view of the fact that R.S.C., Ord. 19, r. 15, *Grizewood* v. *Blane* (1851), 11 C.B. 526, and *Willis* v. *Lovick* [1901] 2 K.B. 195 require the statute to be pleaded by a defendant who sets it up as a defence, it is not professionally improper for a solicitor to accept instructions to sue in such a case. The Council understand that the Lord Chief Justice's observations apply exclusively to the case where such a writ is endorsed for "an account stated" and that his view is that, as such a pleading does not truly disclose the real nature of the claim, it amounts to an attempt to deceive the court. But solicitors are still left to puzzle out for themselves how a writ may be issued which does disclose the true nature of the claim, having regard to the duty of the court not to countenance a claim which is *ex facie* illegal (*Alexander* v. *Rayson* [1936] 1 K.B. 169).

Solicitors' Undertakings

THE Council of The Law Society warn solicitors, in the March issue of the *Law Society's Gazette*, that where an undertaking is given by a solicitor which, while not clearly implying personal liability, nevertheless does not in terms deny such liability, the Council will take all appropriate steps to induce him to honour his undertakings, as the Council are of the opinion that the reputation of the profession requires that such undertakings should be honoured. Where, however, a solicitor has given an undertaking expressed to be on behalf of a client, which the solicitor is clearly not personally able to implement, the Council believe that he is under a duty to persuade his client to honour it and that he would fall short of his duty if he failed to take any action which lay within his power to induce his client to implement that undertaking. The Council take the view that much greater attention should be paid to the wording of undertakings both by those giving them and those accepting them and especially so where the undertaking is to do something which the solicitor concerned cannot personally do and which he cannot compel his client to do. The Council quote their 1937 statement, republished in the *Gazette* for March, 1948, to a similar effect. In that statement they added that the use of words such as "on behalf of my client" or "on behalf of the vendor" does not make sufficiently clear the intention not to accept personal liability.

The Oxford Union and Respect for Law

LORD JUSTICE BIRKETT, himself a former President of the Cambridge Union, defended law and the legal profession at the Oxford Union on 15th February on the motion that "This house has little respect for the law and less for lawyers." He said that a deep respect for the law had always been a distinguishing characteristic of the English way of life, and he hoped it always would be. If any young man there was going into the law because of the money to be made there, he would be wise to seek some other vocation. When speaking of the language of the law and its absurdities, it was important to remember that one must use language which would make the law plain in words which were capable of only one interpretation. "It can't be done, but one must attempt it." The law by which we were governed, Sir Norman continued, was something we took for granted, like the sunlight or the air. "Even such a thing as turning on a tap is governed by more legislation, more statutory orders and regulations than you could possibly conceive." The motion was defeated by 467 votes to 188.

CONNIVANCE

SECTION 4 of the Matrimonial Causes Act, 1950, has a marginal title, "Duty of Court on Presentation of Petition," and those parts of the section material to this article read as follows:

"4.—(1) On a petition for divorce it shall be the duty of the court to inquire, so far as it reasonably can . . . whether there has been any connivance . . . on the part of the petitioner.

(2) If the court is satisfied on the evidence that . . .

(*a*) . . .

(*b*) where the ground of the petition is adultery, the petitioner has not in any manner been accessory to, or connived at . . . the adultery . . . the court shall pronounce a decree of divorce, but if the court is not satisfied with respect to any of the aforesaid matters, it shall dismiss the petition . . ."

This section, being part of a consolidating Act only, has in no way altered the previous law of connivance, nor has it resolved any of the difficulties surrounding the subject. There has, however, been a recent series of cases in which husbands have spied upon and trapped their erring wives—a series culminating in *Douglas* v. *Douglas* (1950), 94 SOL. J. 487—that has been considerably more helpful, and this article is written with those cases in the foreground.

The derivation of the word "connivance" might be misleading. It comes from *connivere*—to close the eyes, to blink, to wink, to wink at—whereas the cases seem to show that modern petitioners, far from closing their eyes to the first indications of adultery, have opened them very widely indeed and watched. Nowadays the bar of connivance is much more frequently raised against petitioners who have paid attention to what was going on than against petitioners who have been deliberately inattentive, and it is what might be called the active leg of connivance that is the more important in practice. But the passive leg should not be overlooked, as the usual definition of connivance reminds us: "Intentional concurrence in a person's adultery, either by overt acts of conspiracy or by passive acquiescence in the circumstances and conduct which led to adultery with the intention that they should result in adultery."

It is the first act of adultery that is important. In *Gipps* v. *Gipps and Hume* (1864), 10 L.T. 735, Lord Chelmsford said: "It is the first act which constitutes the crime . . . there is not a fresh adultery upon every repetition of the guilty acts although all and every repetition of them may furnish proof of the adultery itself." (We shall, notwithstanding, continue to speak loosely of a "repetition" of adultery.) Denning, L.J., in *Douglas* v. *Douglas*, *supra*, quoted this judgment and said: "The material event therefore . . . is the inception of the adultery and not its repetition. It follows that the consent of the husband which is a bar to his claim must be a consent to the adultery before it starts."

If adultery has been suspected before satisfactory proof has been obtained, the earlier suspected acts should be pleaded. In *Manning* v. *Manning*; *Fellows* v. *Fellows* (1950), 94 SOL. J. 238, Mr. Manning only pleaded one act of adultery—on 2nd October—the date on which he deliberately created facilities for his wife to misbehave.

Therefore it was found (and for other reasons also) that he was guilty of connivance, whereas in *Douglas* v. *Douglas* the husband pleaded adultery on 11th February (when he laid a similar trap) and on previous dates unknown. In that way he opened the question whether his deliberate trap had caught a repetition of the adultery or its inception. The learned commissioner found against him because he was not satisfied "beyond reasonable doubt" that the inception was earlier, but the Court of Appeal disagreed with him concerning the standard of proof. Somervell, L.J., said: "In considering connivance . . . regard must be paid to the husband's state of mind and it may lead to a conclusion as to the inception of the adultery on, at the best for the respondent, a balance of probabilities."

The court need only be satisfied that the petitioner reasonably and honestly believed in adultery. Although at the time critical to the issue of connivance the evidence may not be strong enough to prove adultery, it may nevertheless be sufficient to advance the date of inception for the limited purposes of denying connivance. This view taken by the Court of Appeal enabled Mr. Douglas to convince them that on 11th February—the date of the trap and the first strict proof of adultery—he had previously reasonably believed that his wife had already committed adultery and his action in creating facilities for its repetition was not connivance.

It will be appreciated that this, as it were, indulgence towards the petitioner flowed from the court's insistence on strict proof of connivance. In the words of Somervell, L.J.: "Connivance must be strictly proved and the presumption of law has always been and remains against connivance." His lordship said that although Rayden on Divorce, 5th ed., p. 131, suggests that if the balance of probabilities were in favour of connivance it would be enough to bar the petition, yet *Churchman* v. *Churchman* [1945] P. 44 showed that strict proof is required.

The essence of the bar of connivance is a willing mind (*volenti non fit injuria*), and the state of mind of the petitioner must be considered. This was stressed in *Woodbury* v. *Woodbury* (1948), 92 SOL. J. 470, and affirmed in *Douglas* v. *Douglas*, *supra*, despite certain remarks of Bucknill, L.J., in *Manning* v. *Manning*, *supra*, which might have been construed in a contrary sense.

The petitioner's state of mind is in issue not only in deciding whether at the date critical to connivance he had a reasonable and honest belief that adultery had already been committed, but also in deciding whether, like the husband in *Manning* v. *Manning*, he was anxious for adultery to happen, or, like the husband in *Douglas* v. *Douglas*, he was anxious that it should not. In this latter case Denning, L.J., said: "In connivance it is essential that there should be a corrupt intention . . . Now, a man who sets watch on his wife, whom he suspects of adultery, cannot be said to have a corrupt intention. He is seeking to discover the offence, not to promote or encourage it."

This the lord justice described as Stage 1, when the petitioner is not convinced that adultery has already been committed. If at this stage, whilst unconvinced, he were to set a trap by creating facilities for adultery to be committed, he would be guilty of connivance because he would be promoting the inception (so far as he was aware) of adultery—no matter whether he wanted adultery to happen or not. He would be, in a sense, estopped from denying that he wanted adultery to commence, and Bucknill, L.J., made clear in *Douglas* v. *Douglas* that it was to such a situation as this that he referred when he indicated in *Manning* v. *Manning* that the state of mind of the petitioner might be immaterial.

During Stage 1, therefore, the petitioner is only entitled to watch or listen to the respondent and the lover (with mechanical or electrical aids if need be) when they have created

opportunities themselves for meeting. Once, however, the petitioner by his observations is honestly convinced that adultery has been committed, and has reasonable grounds for that conviction, he has reached Stage 2. In the second stage he can purposely leave the guilty pair alone, or facilitate their meeting, or otherwise create opportunity for the continuance of adultery. Otherwise he might be unable to present the courts with the strict proof they require before they will grant him relief. In the old canon law it was even suggested that the deceived spouse was under a public obligation to unmask the offence and to punish the offenders.

It appears that one might conclude from the judgments in *Douglas* v. *Douglas*, *supra*, that during Stage 2 the petitioner would not be barred even if he or she were then most anxious and willing that the adultery should be repeated, because the corrupt intention in such a case would refer to what the petitioner honestly believed to be the continuance and not the inception of the offence.

A. G. R.

Costs

INCIDENCE OF LIABILITY—II

We dealt in our last article with some of the more common cases where the incidence of costs fell on a party other than the one who retained and instructed the solicitor, and we will now continue with our examination of these cases.

It will be remembered that the last point with which we dealt was the costs in connection with marriage settlements, and it seems clear from the authorities that even the costs of establishing the trust funds which are to form the nucleus of the marriage settlement must, by custom, be regarded as payable by the husband. What, however, of the costs with regard to after-acquired funds? The wife, or the husband for that matter, might covenant to bring into the marriage settlement funds any property to be acquired as a result of the death of a member of the family, and the question arises as to who should bear the cost of perfecting the trustees' title to such funds. It will be clear from what is said hereafter that such costs will not fall on the estate of the deceased relative, and it becomes a question, therefore, whether the cost of transferring the after-acquired property falls on the husband or on some other party.

The principle which the cases of *Re Lawrance; Bowker* v. *Austin* [1894] 1 Ch. 556 and the earlier case of *Helps* v. *Clayton* (1864), 17 C.B. (N.S.) 553, established was that the whole of the costs of a marriage settlement, including the costs of establishing the fund which was to be settled, fell by custom on the husband, but there, it seems, the matter must stop. The trust fund having been established by the settlement, it would appear that the husband's liability is exhausted, so that if thereafter something has to be done in order to perfect the trustees' title to the property forming the trust funds, then the costs thereof must fall on the trust and not on the husband. In short the costs of any movement of the trust funds, once those funds have been established, must be borne by someone other than the husband, whose liability is exhausted when the fund is established. The residue of the estate of the deceased relative, in circumstances such as those set out above, will not be liable for the costs of transferring the funds to the marriage settlement trustees, as we shall see hereafter, and the only persons who will, therefore, be liable will be the marriage settlement trustees themselves.

Not infrequently, questions arise as to the incidence of costs in connection with the estate of a deceased person. It is reasonably clear that the costs of administration of the estate of a deceased person fall upon the residue of the estate. The term "administration expenses" has been considered judicially on more than one occasion. Thus, in *Sharp* v. *Lush* (1879), 10 Ch.D. 468, Jessel, M.R., brought out the principle that there was no distinction between executorship, testamentary and administration expenses, so far as the incidence of costs is concerned; whilst Kekewich, J., in *Re Clemow; Yeo* v. *Clemow* [1900] 2 Ch. 182, emphasised the point that in his view administration and testamentary expenses had much in common from the point of view of costs.

Before considering the incidence of administration and executorship expenses, then, it is necessary to see exactly what are included within the scope of those expenses. Here again, guidance will be found in the observations of Jessel, M.R., in *Sharp* v. *Lush*, *supra*. His lordship there observed that testamentary expenses are expenses incident to the proper performance of the duty of an executor, and this principle was developed by Kekewich, J., in *Re Clemow*, *supra*. The duty of the executor or administrator is to get in the assets of the estate and discharge the debts and to carry out the wishes of the deceased, or to apply the law of devolution in the case of intestacy, as the case may be, so far as the distribution of the estate is concerned; and all the costs involved in those duties are a proper charge against the residue of the estate (see s. 34 (1) and Pt. I of the First Schedule to the Administration of Estates Act, 1925).

Where the duties involve the paying of pecuniary legacies the costs of paying those legacies will be a proper charge against the estate. To carry the matter a step further, where a part of a deceased's estate is settled, then it seems that the costs involved in segregating the settled funds must be a charge against the residuary estate also, whilst the costs of distributing the settled funds on the death of the life tenant would normally be payable out of the settled funds themselves, although if the life tenant dies before the general administration is closed it would seem not unreasonable to charge the costs of distributing the settled funds against the residuary estate, since in such a case the movement of the funds before the closure of the administration is merely a part of the general administration of the estate.

The next point to be considered is the incidence of costs in the case of specific bequests and devises. Admittedly, the costs of carrying out the wishes of the testator are general costs of administration and the costs of this fall on the residuary estate, but it is necessary here to go a step further and to see precisely at what point of time the executor has complied with the wishes of the testator, so that his duties cease. Fortunately, the matter has been the subject of judicial inquiry and the principle to be observed in determining the incidence of costs in these circumstances is now reasonably clear. It seems that the executor has performed the whole of his duty when he has assented to the bequest or devise, with the inevitable result that the costs subsequently involved in perfecting the title of the legatee or devisee cannot be charged against the residuary estate but must be borne by the legatee or devisee himself.

Thus, in the case of *Re de Sommery* [1912] 2 Ch. 622 a bequest was made of property in France upon which French succession duty was payable, and it was found that this duty must be paid by the legatee himself and not out of the residue of the estate of the testator, and the incidence of costs in relation to the perfecting of the legatee's title to the property fell also on the legatee. Astbury, J., observed: "With

regard to the costs, they were, in my opinion, all costs incurred in carrying into effect the trusts of the twenty-one shares, and not costs of the general administration. They should, therefore, be borne by the property in respect of which they were incurred and not by the estate generally." The work involved in perfecting the title of the legatee to the property in question was no doubt performed by the executor of the estate or his solicitor, but this is another instance where the solicitor's costs fall on someone other than the person retaining him.

Again, in the case of *Re Scott* [1915] 1 Ch. 592 somewhat similar circumstances were present and it was held that the French duty was payable by the legatee and not by the general residuary estate of the testator. There Cozens-Hardy, M.R., observed " Where there is a specific bequest the first duty of the executor is to consider whether he assents to it or not. If he assents to it the property passes out of him and is in the specific legatee, and from that moment the executor cannot possibly interfere with the possession of the chattels, cannot claim them from anybody else, and the legatee who has the legal title is the person to recover them and to do what is necessary."

The question then arises as to what amounts to assent by the executor, for the costs of assenting are part of the costs chargeable against the residuary estate. If the assent is verbal then no question arises, for there will be no costs involved. If the assent is in writing, then the costs of preparing the written assent and of obtaining the executor's signature thereto will be a charge against the residuary estate. The liability of the estate for costs stops there, however, and anything further that is to be done in order to perfect the title of the legatee must be borne by the legatee himself. Thus, in the case of a specific bequest of stocks and shares, a transfer must be prepared and signed, and lodged with the company concerned together with the share certificate in order that the specific legatee may be registered in the company's books as the legal owner of the shares. All this, however, is a matter for the specific legatee ; the cost thereof must be borne by him, and he will also have to pay the stamp duty on the transfer. This was made clear in the case of *Re Grosvenor* [1916] 2 Ch. 375, for there Astbury, J., observed : " In the present case the costs of transfer and stamps are not costs incurred by the executors and trustees in getting in the estate for distribution, but they are incurred and payable after the specific legacies have been assented to. On the principle of *Re de Sommery* and *Re Scott* these are costs and expenses which the separate specific legatees must pay in order to complete their title to their specific property, which after assent the plaintiffs are holding as trustees for them, and not as executors." The learned judge then went on to direct that the legatees must bear the whole costs of the transfer, including the executor's own costs in relation thereto.

This is a very important point to be borne in mind by solicitors acting for the executors of an estate, and it is a point which experience shows can easily be overlooked. Normally, most of the work in connection with the actual transfer of the specific legacies is done by the solicitors for the estate and is usually done, moreover, on the instructions of the executors, but this is yet another instance of someone other than the person instructing the solicitor being liable for the costs involved. In this case, however, the authority is not founded in established custom, but in judicial direction.

J. L. R. R.

A Conveyancer's Diary

DEFENCE REGULATIONS

I HAD the misfortune recently to be obliged to trace the history of certain Defence Regulations with the object of ascertaining not only whether certain of these regulations were still in operation, but also what purposes these regulations can still serve. The first part of the inquiry which I undertook has since been made easy by the publication by the Stationery Office of a volume containing all the regulations made under the Emergency Powers (Defence) Act, 1939, and certain other emergency statutes which were still in operation on the 10th December, 1950. But this volume does not provide a ready answer to the latter part of my inquiry, which can only be disposed of after consideration of a number of statutes set out in the Appendix thereto. As there are many emergency regulations which still affect, or are capable of affecting, the position of a property owner in a marked degree, it may be useful to set down here the results of my investigations.

All Defence Regulations made between the outbreak of the last war and 1945 were made under the authority of the Emergency Powers (Defence) Act, 1939. This Act was originally enacted for a period of a year from the 24th August, 1939, with the proviso that on an address from both Houses of Parliament it might be kept in force for a further period of one year by Order in Council (s. 11 (1)). The Act was continued in force year by year until the 24th August, 1945, and finally for a further period of six months from that date by the Emergency Powers (Defence) Act, 1945. On the expiration of this final period the Act of 1939 ceased to operate by effluxion of time.

Up till this time the operation of all Defence Regulations could be traced to this one statute, but after 1945 it is necessary to consider two distinct series of enactments in order to ascertain whether any regulation is still effective, and if so for what purposes. This curious and inconvenient position is due to the fact that before the operation of the Act of 1939 had come to an end, the operation of many Defence Regulations which, in the absence of special measures, would also have expired with the parent Act, was preserved by two distinct measures. One of these measures was the Supplies and Services (Transitional Powers) Act, 1945, the other the Emergency Laws (Transitional Provisions) Act, 1946.

The original purposes for which regulations could be made under the Act of 1939 were specified in s. 1 (1) of that Act : " securing the public safety, the defence of the realm, the maintenance of public order and the efficient prosecution of any war in which His Majesty may be engaged, and for maintaining supplies and services essential to the life of the community." Section 1 of the Supplies and Services (Transitional Powers) Act, 1945, as well as preserving certain regulations made under the earlier Act, extended the purposes for which the regulations to which it applied might operate by providing that such regulations might have effect for the purpose of so maintaining, controlling and regulating supplies and services as *inter alia* (*a*) to secure a sufficiency of those essential to the well-being of the community or their equitable distribution or their availability at fair prices, or (*b*) to facilitate demobilisation and the disposal of surplus material, or (*c*) to facilitate the readjustment of industry and commerce to peace requirements.

The Act of 1945 applied to certain regulations only, not to all regulations made under the Act of 1939, the most important of these being reg. 51 of the Defence (General) Regulations, 1939, which gave power to take possession of land, i.e., to

requisition land. I will refer later to certain other regulations which owe their present existence in part to the Act of 1945, but for the present reg. 51 can be regarded as typical of this bunch of regulations, as it is also from the present point of view by far the most important.

The Act of 1945 was enacted for a period of five years from the 10th December, 1945, with a proviso that it could be continued in force by Order in Council for periods of one year at a time upon an address being made by each House of Parliament. But before the original period of five years for which it had been enacted had come to an end the scope of the Act was enlarged by the passage of the Supplies and Services (Extended Purposes) Act, 1947, which provided, in effect, that any regulations which on the 13th August, 1947 (the date of its passing), had effect by virtue of the Act of 1945 should be extended in their operation so as to be applicable for the purposes specified in s. 1 (1) of the Act. These purposes were (*a*) promoting the productivity of industry, commerce and agriculture, (*b*) fostering exports and reducing imports for redressing the balance of trade, and (*c*) generally ensuring that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community. The last of these purposes is extremely wide, and may be compared with the equally wide language of the Act of 1939.

All regulations to which the Act of 1945 applied thus continued in operation under that Act, as extended in scope by the Act of 1947, until 1950, when they would have ceased to operate by effluxion of time if no further action had been taken. In fact, an order has been made under s. 8 of the Act of 1945 which has had the effect of continuing certain of these regulations until the 10th December, 1951, unless they are previously revoked under the power to do so contained in s. 3 (1) (*a*) of the Act of 1945. The order which has done this is the Supplies and Services (Continuance) Order, 1950 (S.I. 1950 No. 1769), and the regulations which it has saved, and which are of interest to the conveyancer and property lawyer, are the following regulations of the Defence (General) Regulations, 1939: No. 51 (requisitioning of land), No. 53 (requisitioning of property other than land), No.56A (control of building operations), No. 68CA (restriction on conversion of housing accommodation to use for non-residential purposes), and No. 68CB (provisions facilitating lettings of parts of dwellings). These regulations are all available for any of the purposes of the Act of 1945, as extended by the Act of 1947, and having regard to the terms of s. 1 of the latter it would be practically impossible to challenge any *bona fide* exercise of any power conferred by these regulations on the ground that it is *ultra vires* the statutes under which these regulations continue to operate.

Pari passu with the measures so far considered other enactments have preserved other regulations which, like those which continue in operation by virtue of the Supplies and Services legislation, would otherwise have expired at the latest on the 24th February, 1946, when the Act of 1939 ceased to operate. The Emergency Laws (Transitional Provisions) Act, 1946, provided by s. 1 (1) that certain Defence Regulations should continue in force until the 31st December, 1947, and should then expire. Among the regulations specified as so continuing were the following Defence (General) Regulations: No. 16 (control of highways near defence works), No. 22 (billeting), No. 50 (power to do work on land connected with clearance of property damaged in war operations), No. 50B (fixtures), and No. 52 (use of land by armed forces). These regulations were not, however, all allowed to lapse, as had been provided by the Act of 1946, on the 31st December, 1947, some being further continued in operation for specified periods by the Emergency Laws (Miscellaneous Provisions) Act, 1947. Among the regulations so dealt with were Nos. 16 and 50B of the Defence (General) Regulations, which were continued in force until the 10th December, 1950, this date doubtless having been chosen in order to secure uniformity, in the matter of the period of operation at any rate, between those regulations which fell within the scope of the Supplies and Services legislation and those to which the Emergency Laws legislation applied.

Finally, some of the latter regulations have been further continued in force by an Order in Council made under s. 7 of the Act of 1947 for a period up to the 10th December, 1951, and among these regulations is No. 16 of the Defence (General) Regulations. This regulation was modified by Pt. IV of Sched. I to the Act of 1947 to provide for the stopping-up or diversion of highways by the order of the Minister of Fuel and Power, if thought necessary for the purpose of working open-cast coal or constructing or extending an electricity generating station, and in this modified form is of considerable importance.

It may be added that there is nothing to prevent any given regulation being kept in force by both the Supplies and Services legislation and the Emergency Laws Acts simultaneously (reg. 50 was, in fact, kept in force like this for a time), but in general if the history (on which may depend the effect) of any given regulation has to be ascertained, it is necessary to follow either one or other of the two streams of legislation to which I have referred. The existence of these two bodies of enactments, interconnected but yet distinct, is doubtless due to administrative requirements, but it makes the pursuit of an inquiry into the position at any given time of any Defence Regulation a matter of unusual difficulty.

"A B C"

Landlord and Tenant Notebook

NON-AGRICULTURAL PART OF HOLDING AGAIN

IT was bound to happen, and will probably happen again; but the plaintiffs in *Howkins* v. *Jardine* [1951] 1 All E.R. 320; 95 SOL. J. 75 (C.A.), will enjoy the distinction of being the first landlords of mixed property to try to see what could be done with the *obiter dictum* in Tucker, L.J.'s judgment in *Dunn* v. *Fidoe* [1950] 2 All E.R. 685; 94 SOL. J. 579 (C.A.).

In the earlier case, discussed in the "Notebook" of 16th September, 1950 (94 SOL. J. 591), the plaintiff was landlord and the defendant tenant of an inn and some twelve acres of pasture and orchard, the defendant making more money by selling drink than by producing food and letting off grazing. Consent to a challenged notice to quit having been refused (after appeal to the Agricultural Land Tribunal), it occurred to the plaintiff that the property might not be an "agricultural holding" at all. It was held that it was, the inn being used, and necessarily used, in connection with the agricultural trade or business carried on by the defendant. But in his judgment, Tucker, L.J., said: "I think that it is a possible view that, having regard to the scheme of the [Agricultural Holdings] Act of 1948, the language of s. 1, and the provisions of ss. 31 and 32, it may be that a notice to quit premises of that nature [i.e., premises exemplified by a large hotel with a

small portion of land used for agricultural purposes unconnected with the hotel, or a large factory with a certain amount of land from which produce was sold] could be held to be invalid without consent in so far as it applies to the agricultural portion but valid for the remainder . . . It may be a necessary inference from this Act that that result was intended in the case of a building, for instance, which is totally unconnected with the agricultural land with which it is let."

Section 1 defines "agricultural holding" as the aggregate of *the* agricultural land comprised in a contract of tenancy, etc., and "agricultural land" as land used for agriculture which is so used for the purposes of a trade or business, etc.; s. 31 validates notices to quit part if given for boundary adjustment purposes, etc., or with a view to using the part concerned for one of several specified purposes (cottages, allotments, roads, etc.), while s. 32 entitles the recipient of such a notice (or of one given by a reversioner on severance of the reversion) to accept it as a notice to quit the whole.

The property in *Howkins* v. *Jardine* consisted of seven acres of agricultural land with three cottages; the defendant tenant had originally lived in one of them, but had acquired an additional or other farm, and when the plaintiffs served a twelve months' notice to quit and when that notice expired none of the three cottages was occupied by a person engaged in agriculture. The agreement was an "agricultural" one.

The mixture was, accordingly, less complete than that revealed in *Dunn* v. *Fidoe*, in which, though the tenant ran two businesses, he did use the building in connection with the farming business. On the other hand, the proportion between its elements contrasts with those constituting the properties (hotel, factory plus land) visualised by Tucker, L.J., in that case.

The notice, given in March, 1949 (over a year before the decision in *Dunn* v. *Fidoe*), did not purport to limit itself, even in the alternative, to the cottages; it was when the defendant's counter-notice under s. 24 (1) had led to proceedings for consent, again ultimately refused, that the landlord sought possession not of the cottages, but of their rents and profits. The argument advanced (which succeeded in the county court) was that the non-agricultural part of the property was unaffected by the Act and that consequently the withholding of consent after the counter-notice given under s. 24 (1) had no application to the cottages, the tenancy in so far as it comprised them having been duly determined. The plaintiffs sought to meet one obvious answer, based on the absence of machinery for apportionment, by contending that s. 8—which provides for arbitration to vary rent—met the case.

As far as the last contention is concerned, it was pointed out by Somervell, L.J., that s. 8 was necessary because of the security of tenure provisions; and by Jenkins, L.J., that the section was clearly directed to the revision of the rent of an existing holding, not the fixing of the rent of a new one. It might, I submit, have been added that the fact that the change cannot take effect immediately militates against the contention.

The objection of no apportionment machinery was held to be fatal to the plaintiffs' case, but the circumstance was brought in rather as support for the main reasoning, which rested on the proper interpretation of s. 1. The plaintiffs' arguments had emphasised the word "used" in the definition given in subs. (2): "'agricultural land' means land *used* for agriculture which is so used for the purposes of a trade or business . . .," but the suggestion that this could effect a severance was rejected by Somervell, L.J., who held that the object was to exclude from the Act land used for the purposes of agriculture but not as a trade or business (see, as to the importance of the business element, 94 SOL. J. 365).

The court, while agreeing that many of the provisions of the Act were difficult to apply in the case of mixed properties, found itself in agreement with one of the points made by Tucker, L.J., in *Dunn* v. *Fidoe*; what matters, under the present definition, is not dominant user, but *substantial* user. On the facts before it, Somervell, L.J., indicated that acceptance of the plaintiffs' arguments would mean that the holding might be severable one minute (while the cottages were not occupied by farm labourers), unseverable the next; if severance were possible, Somervell, L.J., said, it could only be in cases where what was non-agricultural was severable by nature, e.g., an inn or factory independent of farmlands. Jenkins, L.J., likewise came to the conclusion that the substance of the matter must be looked at to see whether, as a matter of substance, the land comprised in the tenancy, taken as a whole, was an agricultural holding. Hodson, J., after reminding us that severance was not the actual issue, pointed out that Tucker, L.J.'s judgment had disposed of the view that dominant or main user was the test; substantial user is what decides the status of the property. Thus, while in the present case the landlords' claim failed, it seems that the hypothetical mixtures of hotel and a little land and factory and "some" land would not, in the opinion of the court, constitute agricultural holdings at all.

Tucker, L.J.'s examples appear to have stressed the element of proportion, which was, perhaps, because their true author was plaintiffs' counsel, whose argument it suited to conjure up a vision of a lesser portion of the demised premises being used for farming purposes. I would suggest that the stress is, in fact, apparent rather than real; and that the learned lord justice's conclusions would apply in any case in which the two portions were not only distinct but mutually independent. It is, of course, extremely unlikely that any set of demised premises will be found to be equally, or anything like equally, divisible into agricultural land, and land or buildings outside the definition; and this brings me to my final observation. While we are not told much about the terms of the letting in *Howkins* v. *Jardine*, and the judgments do not exactly emphasise their importance, I think it right to say that their nature was a decisive factor. Somervell, L.J., said, early in his judgment: "The lease contained provisions usual in a lease of an agricultural holding"; Jenkins, L.J.: "The whole, including the cottages, was let under an agreement in terms clearly appropriate to an agricultural holding"; Hodson, J., mentioned "the holding, let, as it was, by an agricultural lease." It seems undeniable that this circumstance was a factor in the conclusion that the property was substantially used for agriculture.

R. B.

The Hon. E. E. S. MONTAGU, C.B.E., K.C., has been appointed Recorder of the Borough of Southampton.

Mr. C. G. TRAHERNE has been appointed Deputy Chairman of Glamorgan Quarter Sessions.

Mr. D. E. G. FEARN has been appointed Registrar of Southwark, Dartford and Woolwich County Courts.

Mr. E. P. PLATT has been appointed Registrar of Marylebone County Court.

Mr. V. D. JONES has been elected President of the Herefordshire, Breconshire and Radnorshire Law Society.

Mr. H. E. SCOTT has been appointed clerk to the Shipton magistrates.

PRACTICAL CONVEYANCING—XXX

INDORSEMENTS ON GRANTS OF REPRESENTATION

IT seems that there is still a good deal of doubt as to the need for an indorsement on a grant of probate or letters of administration of particulars of an assent or conveyance and as to the effect of the omission of such an indorsement.

In the first place, any person in whose favour an assent or conveyance of a legal estate is made by a personal representative *may* require that notice of the assent or conveyance be written or indorsed on or permanently annexed to the probate or letters of administration (Administration of Estates Act, 1925, s. 36 (5)). This is done at the cost of the estate and the grant must be produced to prove that the indorsement has been made. Thus, both a devisee to whom an assent is made and a purchaser to whom land is sold may require the indorsement.

On the other hand, in s. 36 (6) there is an important distinction. This is the subsection which makes a written statement by a personal representative that he has not given or made an assent or conveyance in respect of a legal estate sufficient evidence in favour of a purchaser. There are two limits on the operation of the subsection; first, it is without prejudice to any previous disposition made in favour of another purchaser deriving title mediately or immediately under the personal representative, and, secondly, it does not operate if notice of a previous assent or conveyance has been placed on or annexed to the probate or administration. Subject to these two limitations a conveyance accepted on the faith of such a statement operates to transfer or create a legal estate as if no previous assent or conveyance had been made. The result is that the statement by the personal representative will not operate to give priority over an earlier purchaser *whether or not that purchaser obtained an indorsement on the grant*. But the rights of a devisee under an earlier assent will be overridden in favour of a purchaser unless the indorsement has been made.

Thus, the conclusion is quite clear. A devisee must, for his own protection, get an indorsement on the grant; a purchaser from a personal representative may do so, but need not.

If a devisee omitted to obtain the indorsement at the time of the assent, can a purchaser from him require him to have it made? The answer to this question appears to be negative, on the ground that the making of the indorsement at the time of the conveyance would not benefit the purchaser. As no indorsement of the assent was made originally it is possible that the personal representative may, after the assent but before the conveyance by the devisee, have made a conveyance affecting a legal estate in the same property. If he has already done this the title of the devisee may have been divested in favour of the person who obtained such subsequent conveyance and, if this has happened, the devisee has himself (or his solicitor) to blame for not making an indorsement which would have protected him. (It is assumed that the subsequent purchaser obtained a statement in writing that there had been no assent and so obtained the protection of s. 36 (6).) But, as was noted above, the statement that there has been no assent does not give priority over any previous disposition made in favour of another purchaser deriving title mediately or immediately under the personal representative. Therefore, once the purchase from the devisee is completed no future conveyance by the personal representative can prejudice the purchaser even though there is no indorsement on the grant.

A reader has drawn attention to the difficulties which may arise when a grant is lost. A copy of the grant can be obtained but this cannot show whether there were any memoranda indorsed. This reader makes the suggestion that a system should be devised whereby a copy of any memorandum could be registered at the probate registry. A copy of a lost grant could then reveal any indorsed memorandum. The present writer's view is that the advantages of such a system would be too small to justify its introduction. For the reasons given above, even if a devisee has not made an indorsement, it is too late to rectify the omission when the devisee sells. On the other hand one cannot avoid a tendency to object to any suggestion which would increase the number of public registers. In general, what conveyancers want is undoubtedly a reduction in their number.

One point seems to be left open. If a purchaser from a devisee finds that there is no indorsement relating to the assent (or, if the grant is lost, he is uncertain) should he make any additional inquiries to ascertain whether the personal representative has executed a later sale overriding the assent? In practice it is most unlikely that the purchaser's solicitors need take any special steps. If the devisee has obtained the title deeds and has been in possession of the property one can surely assume that no *bona fide* purchaser would take a title from the personal representative. Such matters as custody of deeds and possession of the property are the only indication any purchaser gets that his vendor has not already sold to someone else (except in the case of registered land and land subject to the Yorkshire system of registration of deeds). Surely, then, even if any special protection from the terms of the Administration of Estates Act, 1925, is not obtained, one can properly rely on the normal indications of the negative fact that there has been no previous adverse conveyance by the devisee or by the personal representative who assented in his favour.

J. G. S.

HERE AND THERE

BEST IN THE WORLD

WHAT the present generation of law students are being told about the glories of the British Constitution I do not know, but when in the inter-war period I was trying to memorise the right things to tell the examiners we were constantly taught to thank God that we were not as other nations, lesser breeds without the common law to rejoice with Dicey that in our perfectly integrated legal system the free and lawful Englishman had never had to swallow the bitter draught of the *droit administratif*; that here at any rate the law was universal and no respecter of the Civil Servant, who was emphatically not a special sort of animal preserved in a kind of judicial Whipsnade from the shattering contacts of the ordinary courts. It is, of course, still axiomatic that British justice is the best in the world and no doubt it will still be axiomatic long after UNO has appointed Errol Flynn Lord Chancellor. Quite recently an eminent journalist of world-wide experience was telling the Sunday newspaper public that "the more I see of other legal systems the prouder I am of our own, which is quite unbeatable." His favourable impressions of Old Bailey jurisprudence crowned the memorable occasion of luncheon there with the Sheriffs, albeit those meals are not the unforgettable gastronomic endurance tests undertaken by our grandfathers in the law. Two dinners for them—one at three and one at five—for the courts worked the clock round, nine to nine, and the judges ate in relays, some arranging their days so as to manage both services with a few drinks in between. Those were the days when there was never a dull moment in court.

ADMINISTRATIVE LAW

BUT back to *droit administratif*—our self-congratulation at a providential escape from this sinister Continental device may receive a jar or jolt on a closer examination of its latest

developments in France. Of the latest developments in our own country even the dullest are becoming all too painfully aware. The administrative technician has got us pretty nearly where he wants us. "If the Minister has good reason" means "If the Minister thinks he has good reason." (The House of Lords will have to distinguish itself quite a lot before the repercussions of the 18B case are got under control.) And where the Minister and the Minister's men have stamped their feet His Majesty's judges more often than not find themselves staring at a notice, "Keep Out—and That Means You." Now, while the Civil Servants may well thank the goodness and the grace that on their berth hath smiled, the *ci-devant* free-born Briton is painfully conscious that his boasted freedom from administrative law has led with unerring accuracy to a state of administrative lawlessness. So where do we go from here? It is rather sad to have to admit that, in spite of Dicey, they order this matter better in France. Those who doubt it would do well to look up a couple of articles that appeared in *The Times* recently in which Professor C. J. Hamson, Reader in Comparative Law at Cambridge University, discusses the functions of the Conseil d'Etat, which has achieved for the French "the reconciliation of the powers of the executive with the rights of the subject and the rule of law."

CONSEIL D'ETAT

It might have happened in England if they had reformed the Star Chamber instead of killing it. Or again the development of the Judicial Committee of the Privy Council might have taken a different turn, for "the main business of the Conseil as a whole is to tender advice to the Government and to the executive. So far from being a hostile critic, it should be regarded as the expert collaborator of the administrator in the widest sense." It consists of five sections or committees, one, *la section du contentieux*, possessing judicial functions. It is a court in every sense, with judges independent of the executive holding office during good behaviour or until they reach the retiring age, and, "if they have a bias, it is in favour of the subject." To their control is subjected the whole administrative machine. They may examine every administrative act and deal with it, if need be, by *annulation* and an award of damages. The court has jurisdiction to hear appeals from any administrative tribunal on a point of law. "So firmly established is its jurisdiction, that it would seem barely credible to a Frenchman to attempt to withdraw from the administrative court cognisance of any administrative act." *Excès* and *détournement de pouvoir* are grounds for quashing. The exercise of a non-discretionary power may be held bad "if it does not upon the face of it correctly and sufficiently state the grounds of the order." Even the exercise of a discretionary power may be controlled. The Conseil may call on the Ministry to set out its reasons and, after communicating them to the plaintiff, may proceed to inquire into their sufficiency. If the Ministry omits to answer, the plaintiff's allegations are taken as correct. If the Ministry's reason, though *prima facie* sufficient, is based on a *fait materiellement inexact* it may be quashed. All this keeps the administration within the bounds of the just and the reasonable and compels it to conduct its business in regular form and according to standards of professional decency. Most remarkable of all, the Judicial Committee (if we may so call it) can hold (and has held) that some act advised by another section of the Conseil was unlawful. As in the United States Supreme Court, the procedure is written rather than oral; memoranda are handed in without any very elaborate arguments from counsel. The key to the success of the Conseil in maintaining public confidence in law and liberty is its sense of a corporate responsibility for doing justice and of having "as great an interest in due administration as the aggrieved subject himself." And drawbacks? The enormous volume of business before the court has brought its list heavily into arrears. Demand exceeds supply. The author of these articles would do well to press the point he has made. Can the French solution help us in the solution of our own problems? Some solution must be found if the Olympian lawlessness of our administrative technicians is not to bring them into hatred, ridicule and contempt (or should we say "any deeper into hatred, ridicule and contempt"?). Now that there is so little left of the Empire to send it appeals, the Judicial Committee ought to have leisure enough to take over the work of rehabilitation.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

The Art of Drafting

Sir,—I have read the article in your issue of 3rd March by "A B C" on "The Art of Drafting." I am an old conveyancer, and although retired from active practice (being in my ninety-first year) I continue my annual certificate and also subscribe to your journal. The article says: "It is astonishing that we should have to wait until the other day for the publication of the first book ever to appear in England with the art of drafting as its subject." On reading this statement, I asked myself: Are you astonished? Well, I am, but in a very different sense. To my mind it is astonishing that the publication of a special book on the art of drafting should be considered necessary or desirable. To learn the art of drafting the student's attention (under a good master) will be called to the well-known and classic books of precedents. These precedents are revised from time to time, to date, not only the subject-matter but in phrasing as well, when alteration, brevity and safety warrant the revision. The study of these up-to-date precedents and practice will amply repay, and also protect the student from the danger in conveyancing of using self-selected words—words sometimes without any authority to support them.

Your contributor likes "*This Deed witnesses*"—well, if this is the output of the "new look" of "the thorough-going modernists" your contributor refers to, I do not like it. In the way it is here used the word "witnesses" grates on the ear. Come along, witnesses, and, in turn, testify on behalf of your deed! The phrase "*This Deed witnesseth*" is, however, euphonious and does not grate on the ear. It will continue to be used, notwithstanding its age, and your contributor's opinion that it is an "inutile archaism."

I agree that brevity should be aimed at, so long as you do not sacrifice clarity and safety by using a new word or phrase in substitution for a word or phrase well understood and authoritatively used.

About four years ago there was an article in your journal in which the writer (unavailingly, I am glad to say) advocated the substitution of another word for the revered word "covenant," because of its "biblical character"!

Hove, 4, Sussex. H. F. CAIN.

Legal Aid Scheme

Sir,—Another weakness in the scheme is, in my opinion, the position of the unaided party who is successful *vis-à-vis* an aided party. The successful but unaided party thereby obtains an order for such costs as the judge at the hearing may think fit to award and the successful party is left to enforce the order if he can without even being able to obtain out of the fund such contributions as the aided party may have paid or be liable to pay.

If the committees let loose on the public assisted litigants who pursue doubtful claims, they should let the fund suffer for so doing by paying something at least towards the costs of the person forced to defend an action which might otherwise not have been brought.

London, W.C.1. JOHN F. CHADWICK.

REVIEWS

A Guide to Land Registry Practice. By JOHN J. WONTNER. Sixth Edition. 1951. London: The Solicitors' Law Stationery Society, Ltd. 21s. net.

The fact that a practice book has reached its sixth edition is sufficient evidence that it fulfils the exacting requirements of the profession. The reason for the popularity of Mr. Wontner's book is not far to seek. Within the compass of fewer than two hundred pages the whole practice of land registration is dealt with in simple and clear language and with that expert touch which only comes from "inside knowledge." The country practitioner to whom the very infrequency of registered land transactions makes impossible the degree of familiarity with procedure which comes with daily use finds in this book everything to make his path easy, for it presumes in the reader nothing beyond a knowledge of unregistered conveyancing. For the junior conveyancing clerk in a busy London office it provides the necessary tuition which the managing clerk can ill afford the time to give, while the managing clerk himself will turn to it for ready reference to the tables of fees and costs, the selection of the appropriate form for an uncommon transaction or to refresh his memory when confronted with the loss of a land certificate or the supervening insanity of a registered proprietor. Not the least valuable feature of the book is the way in which the practitioner is helped over points of detail which cannot be learned from the Act or Rules. There is, for example, the note on p. 40 that an application for registration need not be held up by a purchaser's solicitors pending receipt of a discharged mortgage; the mortgagees' solicitors' undertaking can be sent with the application to be followed later by the discharged mortgage or Form 53, whereupon the undertaking is returned by the Registry to the mortgagees' solicitors. This procedure, besides increasing speed and, therefore, efficiency, often prevents the time limit of the official search from running out before the application could be lodged.

In the sixth edition a chapter has been added on Registered Land and the Town and Country Planning Act, 1947, and opportunity has been taken to bring up to date the scales of fees and costs. The removal of war-time restrictions on printing and paper has enabled the text to be presented in a form which makes for ease of reading and reference. A careful perusal has revealed only the substitution of " or " for " of " on p. 63 and an erroneous reference on p. 60 to mortgage stamp duty of 2s. 6d. per cent. in place of the current rate of 5s. per cent. One minor suggestion to the author and, indeed, to all who print tables of land registry fees: could not the words "First Registrations" and "Dealings" be printed in parentheses at the head of Scales Nos. 1 and 4 respectively? Even the most experienced practitioner is liable to confuse the two scales when making a rapid reference to the tables.

Points on Criminal Procedure under the Criminal Justice Act, 1948. Oyez Practice Notes, No. 15. By D. R. THOMPSON, B.A., of Lincoln's Inn, Barrister-at-Law. London: The Solicitors' Law Stationery Society, Ltd. 7s. 6d. net.

This is a full and attractively presented quick reference work on Pt. I of the Act of 1948, which wrought so many great changes in criminal treatment and procedure. The language is unusually free of unnecessary technicality, and the tabulation and arrangement of the subject-matter, while closely following the arrangement of the Act, is excellent. Particularly valuable are the various tables of comparison with the old law, the list of cases decided under the Act, the sidenotes of the sections in Pts. II and III of the Act with their various commencement dates, and the appendix of previous enactments, showing repeals. There is a workmanlike index. The author is to be congratulated on the service which he has rendered to practitioners.

Cripps on Compulsory Acquisition of Land. Ninth Edition in two Volumes. By ANTHONY CRIPPS, M.A., of the Middle Temple, Barrister-at-Law, assisted by B. KEITH-LUCAS, M.A., Solicitor, Senior Lecturer in Local Government, University of Oxford, and S. LLOYD-JONES, LL.M., Chief Assistant Solicitor, Nottingham Corporation. 1950. London: Stevens & Sons, Ltd. £10 net.

This, the ninth edition of the well-known Cripps on Compensation, appears under a new title and in a new form. The new title, while not so short and neat as the old, does more accurately describe the contents of this edition; as to the new loose-leaf form, the binders have the merit, when compared with those normally used, of allowing one to open the pages out flat, but they are not altogether easy to use: turning over pages requires considerable care, and their size is not well adapted to fit into a bookcase with other books; the reviewer, at least, would express a preference for something less cumbersome.

The new edition is in two volumes, the first containing the law in narrative form and the second various appendices, including no less than 700 pages of statutes, unannotated except for a few footnotes and cross-references. The reader may well find it desirable to transfer the index from the second volume to the first, with which he will have most occasion to use it.

There can be no doubt that the text in the first volume is a most authoritative statement of the law and it will fulfil the trust reposed in it by Sir Stafford Cripps in his foreword that, "edited as it is by a grandson of the original author, it will be found as useful a work of reference as were the preceding editions." Whatever the reader may want on the subject he will find here authoritatively expounded, with references to the authorities, though it must be admitted that the book takes a little getting used to and in some respects lacks cohesion. Thus, paragraphs dealing with the incorporation or non-incorporation of s. 68 of the Lands Clauses Consolidation Act, 1845, appear on pp. 10 and 11 and on pp. 608–610 with no cross-references to each other. Again, the costs of the conveyance under s. 82 of the 1845 Act are dealt with both in chap. 18 and in chap. 29, neither bearing any cross-reference to the other. And in the chapter on payments in respect of depreciation of land values the land in respect of which a claim may be made is dealt with on p. 614 and again on p. 617.

In describing the compulsory acquisition procedure laid down in Pt. I of Sched. I to the Acquisition of Land (Authorisation Procedure) Act, 1946, pp. 262 and 263, reference is made to the advertisement and submission to the confirming authority of a draft order; this is a misdescription, for, once an order has been made by a local authority, it is no longer a draft order, and its description as such is liable to cause confusion with the draft order procedure on acquisitions by Ministers laid down in Pt. II of the Schedule.

There is an error on p. 311, where it is stated that an acquiring authority can register a notice to treat at the local Land Registry in accordance with the provisions of s. 10 (Case C4) of the Land Charges Registry Act, 1925. The Act should, of course, be the Land Charges Act, 1925, and a Class C (IV) charge is registrable in the London or appropriate Yorkshire Land Charges Registry, and not in a local land charges registry. Incidentally, as pointed out in the book, the notice does not constitute a contract until the price has been fixed. The reference in note 74 on p. 302 as to the effect of a notice to treat should be to p. 188 and not to p. 288.

The foregoing are minor criticisms and in no way detract from the usefulness of the book, which is an essential and authoritative reference work, kept up to date by a loose-leaf supplementary service, for any solicitor or other professional man whose practice is concerned with compulsory acquisitions.

NOTES OF CASES

HOUSE OF LORDS

MASTER AND SERVANT: CLAIM TO MONEY OBTAINED AS SERVANT

Reading *v.* A.-G.

Viscount Jowitt, L.C., Lord Porter, Lord Normand, Lord Oaksey and Lord Radcliffe. 1st March, 1951

Appeal from a decision of the Court of Appeal (93 SOL. J. 373; 65 T.L.R. 405) affirming Denning, J. (92 SOL. J. 426).

The plaintiff, while serving as a sergeant in the Army, amassed considerable sums of money by frequently riding in full uniform from one part of Cairo to another on certain civilian motor lorries as to the contents of which there was no evidence. The military police, after making inquiries, took possession of sums standing to the plaintiff's credit at various banks in Egypt. He claimed £13,632 in respect of them by petition of right, which Denning, J., dismissed. The Court of Appeal affirmed that decision and the plaintiff now appealed.

Their lordships took time for consideration.

LORD PORTER, with whose opinion the Lord Chancellor agreed, said that it was suggested in argument that Denning, J., had founded his decision solely on the doctrine of unjust enrichment and that that doctrine was not recognised by the law of England. The exact status of the law of unjust enrichment was not yet assured. It held a predominant place in the law of Scotland and, he (Lord Porter) thought, of the United States; but he was content for the purposes of the case to accept the view that it formed no part of the law of England and that a right to restitution so described would be too widely stated. But that doctrine was not of the essence of Denning, J.'s judgment. The plaintiff was, nevertheless, using his position as a sergeant in His Majesty's Army and the uniform to which his rank entitled him to obtain the money which he had received. In his (his lordship's) opinion, any official position, whether marked by a uniform or not, which enabled the holder to earn money by its use gave his master a right to receive the money so earned even though it were earned by a criminal act. Asquith, L.J., had pointed out that there was a well-established class of case in which a master could recover whether or not he had suffered any detriment in fact—for example, those in which a servant or agent had realised a secret profit, commission, or bribe in the course of his employment. But it was said that that right to recover was subject to two qualifications: (1) the sum obtained must have been obtained in the course of the servant's employment; and (2) there must exist in the matter in question a fiduciary relationship between employer and employee. It was often convenient to speak of money obtained as received in the course of the servant's employment; but strictly speaking he did not think that that expression accurately described the position where a servant received money by reason of his employment but in dereliction of his duty. The right of the master to demand payment of that money was often imputed to a promise implied from his relationship to the servant. He (his lordship) doubted whether it was necessary to raise such an implication in order to show that the money had been received to the master's use; but, even if it were, it might well be contended that there was no illegality in a servant's promising to hand over to his master any sums which he had gained by use of his position. Nor would the master be affirming any criminal act committed by the servant in earning the sum claimed: he would only be saying that as between himself and the servant the servant could not set up his own wrong as a defence. Any third party's claim to the money would not be affected. In that aspect the making of the promise need not and should not be referred to a point of time after the receipt of the bribe: it might well be ascribed to the time when the contract of employment was entered into. As to the assertion that there must be a fiduciary relationship, the existence of such a connection was, in his opinion, not an additional necessity in order to substantiate the claim, but another ground for succeeding where a claim for money had and received would fail. In any case, he agreed with Asquith, L.J., in thinking that the words "fiduciary relationship" in this setting were used in a wide and loose sense, and included, among others, a case where the servant gained from his employment a position of authority which enabled him to obtain the sum which he received. The fact that the Crown here, or that any master, had lost no profits or suffered no damage was immaterial: it was the receipt and possession of the money which mattered, not the loss or prejudice to the master. In general he found himself in complete agreement with the views of the Court of Appeal. He differed only as to the time to which the making of the implied contract was to be imputed. He would dismiss the appeal.

The other noble and learned lords agreed that the appeal failed.

APPEARANCES: *Cyril Salmon*, K.C.; *Colin Pearson*, K.C., and *H. Cassel* (*Lewis & Lewis and Gisborne & Co.*); *Sir Hartley Shawcross*, K.C. (A.-G.); *J. P. Ashworth* and *H. A. P. Fisher* (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

WILL: CONTINGENT GIFTS: GAP: INTESTACY

***In re* Bailey; Barrett *v.* Hyder**

Evershed, M.R., Jenkins and Hodson, L.JJ. 22nd January, 1951

Appeal from Romer, J.

By her will dated in April, 1929, the testatrix gave all her residue to trustees on trust for conversion and then to hold the resulting investments "to pay the income arising therefrom to my said daughter [L] during her life and after her death as to capital and income in trust for my sister-in-law [B] absolutely if she shall be living at the death of my said daughter but if she shall predecease my said daughter then upon trust for my nephew [H] absolutely." L died in 1935, B survived her, but died in 1944, and the testatrix herself died in 1949. Romer, J., held that the will must take effect according to its language, and that, accordingly, there was no provision in the events which happened sufficient to pass the beneficial interest to H, and that the residue passed to the next of kin.

JENKINS, L.J., said that it was apparent that the event on which the gift to the testatrix's nephew H was to take effect, according to the express terms of the will, did not happen because the sister-in-law did not predecease the daughter. *Prima facie*, therefore, the gift to the nephew failed in accordance with the cardinal principle stated in Theobald on Wills, 10th ed., p. 456: "When there is a gift over upon a certain contingency, it will not take effect unless the exact contingency happens." In the present case, the testatrix had provided in clear and unambiguous language, on the one hand, the event in which the gift to the sister-in-law was to take effect—viz., "if she shall be living at the death of my said daughter"—and, on the other hand, the event in which the gift to the nephew was to take effect—viz., "if she, the sister-in-law, shall predecease my said daughter." The first event happened and the second did not. It was impossible to hold that, as a matter of necessary implication from the language used by the testatrix, an intention was sufficiently expressed, or must be imputed to her, of making a gift to her nephew H not only in the event expressed in the will, but in the opposite event which actually happened of the sister-in-law surviving the daughter, should the sister-in-law, having so survived, die in the lifetime of the testatrix. The case fell within the principle stated in *Tarbuck* v. *Tarbuck* (1835), 4 L.J.Ch. 129, and in *Brookman* v. *Smith* (1872), L.R. 7 Ex. 271, as opposed to the line of cases in which the principle stated in *Jones* v. *Westcomb* (1711), Prec. Ch. 316, had been adopted. The gift over could not take effect in the circumstances that had happened.

EVERSHED, M.R., gave judgment to the same effect. As regards the gift to B, the learned judge had observed that B, having survived the daughter, would, if she had survived the testatrix, have taken the residue absolutely, but her not surviving the testatrix caused the gift to lapse. In other words, the gift did not fail as a result of the non-fulfilment of any condition or term imposed by the will, but because the law required that a beneficiary under a will should survive the testatrix in order to take the benefit conferred.

HODSON, L.J., concurred. Appeal dismissed.

APPEARANCES: *Salt*, K.C., and *H. E. Francis* (*Adam, Burn and Son*); *C. A. Settle, Mendel* and *Harold Lightman* (*Henry Boustred & Sons*, for *Percy Walker & Co.*, Hastings; and *Crofts and Ingram*, and *Wyatt & Co.*, for *Sprott & Sons*, Crowborough and *Judge, Hackman & Judge*); *P. S. A. Rossdale* and *M. Bowles* (*Lovell, Son & Pitfield*, for *Robinson & Allfree*, Ramsgate).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

NEGLIGENCE: LIFT GIVEN BY CONTRACTORS' LORRY

Conway *v.* George Wimpey & Co., Ltd. (No. 2)

Cohen, Asquith and Birkett, L.JJ. 22nd January, 1951

Appeal from Sellers, J.

The defendants were contractors who, with several other contractors, were working at London Airport. The company operated a service of lorries for carriage of goods and men about the airport. The drivers all received strict oral instructions to carry only the company's employees, and a notice to that effect was posted in the cab of each lorry. The lorries were clearly marked "Wimpey." It nevertheless became usual for the employees of other contractors to get lifts. A driver could not, except by recognition or interrogation, know if a man seeking a lift were employed by the company. While the plaintiff, an employee of other contractors, having been given a lift, was alighting, he received injuries for which he sued the company. A jury found the plaintiff and the driver equally to blame for the accident, but Sellers, J., found (1) that the plaintiff did not know of the prohibition against lifts; (2) that the company's drivers generally did not knowingly carry men who were not the company's servants; (3) that the driver of the lorry did not know that the plaintiff was employed by contractors other than the company; and (4) that it was not established that the company, as distinct from their driver, knew that men other than their own were using the lorries in that way. He dismissed the action, and the plaintiff now appealed.

ASQUITH, L.J., said that in *Twine* v. *Bean's Express, Ltd.* (1946), 90 SOL. J. 128; 62 T.L.R. 458, the plaintiff was not only a trespasser *de facto*, but never imagined that he was anything else. Here it was conceded that, if the plaintiff was at the material time in fact a trespasser, he could not recover against the company. To succeed it must appear that the plaintiff was riding on the lorry at the invitation or with the licence, actual or constructive, of the company themselves. It was elementary that if A, professedly acting on behalf of B, purported to give C leave to enter on B's land, and A had no actual authority to do so, C would be a trespasser if he acted on that permission: and none the less so because he did not know of A's lack of authority. The plaintiff was *prima facie* a trespasser. For the plaintiff to succeed there must be shown to be knowledge by the company that their drivers had made a practice of disregarding the prohibition; secondly, acquiescence by the company in that practice; and, thirdly, acquiescence in such a manner as to represent to persons like the plaintiff, and, indeed, to the plaintiff himself, that the driver's authority was not limited to carrying the company's men. But the plaintiff failed to establish even the first proposition owing to the fourth finding of the judge. It was then contended that that finding applied only to actual and not imputed knowledge, and that, owing to the evidence of their four employees, the company must be treated as having known of the practice. He (his lordship) did not think that the knowledge of concrete mixers who had nothing to do with the company's transport department could be imputed to the company. Then it was argued that the company must have known that such a practice must inevitably grow up. But in face of the judge's finding that the company did not know, or that there was no evidence that they knew, of such a practice, how could it be said that they *must* have known? In his (his lordship's) opinion the plaintiff never ceased to be a trespasser. The case was directly covered by *Twine's* case, *supra*. That was sufficient to dispose of the appeal, but he would add that, while aware of such decisions as *Limpus* v. *London General Omnibus Co.* (1862), 1 H. & C. 526, his view was that the act of the driver in taking the plaintiff on his lorry was outside the scope of his authority, as it was outside the scope of the driver's authority in *Twine's* case, *supra*.

COHEN and BIRKETT, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *C. N. Shawcross*, K.C., *S. Seuffert* and *O. J. V. Kitson* (*J. H. Milner & Son*); *Humfrey Edmunds* (*Stanley & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

DEBT: PAYMENT INTO COURT: JUDGMENT FOR LARGER SUM: COSTS

Read's Trustee in Bankruptcy *v.* Smith

Roxburgh, J. 24th January, 1951

Action.

The plaintiff, who was the trustee in bankruptcy of R, claimed from the defendant £149 16s. 9d. as remuneration for work and labour done by R. The defendant paid £106 11s. 9d. into court. Roxburgh, J., awarded the plaintiff £139 19s. 9d. Counsel for the defendant submitted that the court ought to order that the plaintiff was entitled to recover £33, and should be at liberty to take the sum paid into court out of court in addition to the said sum of £33, and, consequently, that the plaintiff was not entitled to costs, in view of s. 47 (1) (*a*) (i) of the County Courts Act, 1934.

ROXBURGH, J., said that in the present case there were two defects which prevented the offer of payment from being regarded as a tender in the technical sense. First, only a part of the sum due was tendered. The sum due was, as he (the learned judge) had held, £139, and the sum tendered was only £106. It was an entire claim, and the sum of £106 was tendered in satisfaction of the entire claim. Moreover, so far from being always ready to perform entirely the contract on which the action was founded, the defendant, in his pleadings, did not admit it. Therefore, regarded from the technical point of view, this was not a good plea of tender. *James* v. *Vane* (1860), 2 E. & E. 883, could not be applied in the present case, and the plaintiff had recovered in this action £139 and was at liberty to take out of court £106 paid into court in part satisfaction of the judgment. As regards costs, having regard to the County Courts Act, 1934, s. 47, to the fact that the plaintiff had recovered over £100, and to the fact that his conduct was open to no criticism except on one point, viz., of having brought the action in the High Court and not in the county court, he (the learned judge) thought that he should not deprive the plaintiff of any costs although, if there had not been in operation the provisions of s. 47, he (the learned judge) might have awarded the plaintiff only such costs as he would have had if he had brought the action in the county court.

APPEARANCES: *C. A. Settle* (*Tarry, Sherlock & King*); *M. R. Hoare* (*Warmingtons*); *Hewins* (*Hewlett & Co.*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

RENT TRIBUNAL: NOTICE TO QUIT BETWEEN REFERENCE AND DECISION

Alexander *v.* Springate

Streatfeild, J. 18th January, 1951

Action.

The defendant tenant, on being served with notice to quit two rooms let to her by the plaintiff, referred the tenancy to the local rent tribunal. On 19th July, 1950, the rent was reduced by the tribunal from £2 15s. to £2 5s. a week. On 7th July, before the decision of the rent tribunal had been given, the landlord served the tenant with another notice to quit, on 17th July or at the end of the week of the tenancy which should expire next after one week from the date of service of the notice. The landlord brought this action for possession, contending that the notice to quit of 7th July became effective on 19th October, 1950, by virtue of s. 5 of the Furnished Houses (Rent Control) Act, 1946. The tenant contended that the notice was a nullity in view of that section, which provides: "If, after a contract . . . has been referred to a tribunal by the lessee . . . a notice to quit the premises . . . is served by the lessor . . . at any time before the decision of the tribunal is given or within three months thereafter, the notice shall not take effect before the expiration of the said three months."

STREATFEILD, J., said that it seemed to him that the concluding words of s. 5 were not capable of the construction that the notice ceased to be valid. On the face of it the notice was good, and s. 5 appeared to recognise the notice as being still good, but with the difference that it should not take effect before the expiration of three months from the decision of the tribunal. Despite the contrary view expressed in Megarry on The Rent Acts (5th ed.), p. 89, he (his lordship) was of opinion that, on the proper construction of s. 5 of the Act of 1946, the notice remained good, but that its effect was postponed until three months after the decision of the rent tribunal, even though the notice specified an earlier date. It followed that the landlord was entitled to possession as from 19th October, 1950. Judgment for the plaintiff.

APPEARANCES: *D. Weitzman* (*Gale & Phelps*); *C. H. Duveen* (*Walford & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CONTRACT: DEVALUATION OF £

Cummings *v.* London Bullion Co., Ltd.

Slade, J. 25th January, 1951

Action.

On 15th July, 1949, the plaintiff, an American, bought from the defendants in London for $3,200 a brooch on the condition that the defendants would buy it back at the same price within ninety days if the plaintiff were dissatisfied with it. On 15th August the plaintiff returned it. The defendants set about obtaining the permission of the Treasury under the Exchange Control Act, 1947, to pay the plaintiff the dollars necessary for the re-purchase. By the time the permission came through the £ sterling had become devalued on 18th September, 1949. The defendants were only willing to pay the sterling equivalent of $3,200 at the old rate of exchange. The plaintiff claimed by this action the re-purchase price of the brooch on the basis of the new rate. By s. 33 (1) of the Act of 1947: "It shall be an implied condition in any contract that, where, by virtue of this Act, the permission or consent of the Treasury is at the time of the contract required for the performance of any term thereof, that term shall not be performed except in so far as the permission or consent is given or is not required."

SLADE, J., discussed *Madeleine Vionnet et Cie* v. *Wills* [1940] 1 K.B. 72, and *Di Ferdinando* v. *Simon, Smits & Co., Ltd.* [1920] 3 K.B. 409, and said that the effect of the Act of 1947 on the contract of sale was not to alter the contractual obligation as it existed under the contract itself, but merely to interfere with the time for its performance. The function of s. 33 (1) was to prevent a contract from being so performed as to impinge on the precautions which were necessary to preserve the country's economy: it did not alter the contract itself except in so far as it was necessary to do so. On the true construction of the contract, after the term prescribed by s. 33 (1) had been implied, the debt became due on the date which the contract stipulated, which was 15th August, 1949. It followed that the plaintiff was only entitled to judgment for £796 0s. 8d., the sterling equivalent of $3,200 at the rate of exchange which existed before 18th September, 1949. Judgment accordingly.

APPEARANCES: *I. H. Jacob* (*Kaufman & Seigal*); *T. G. Roche* (*S. Rutter & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

RESTRICTIONS ON EXPORT: MEANING OF "SUPPLY"

Patel *v.* Willis

Lord Goddard, C.J., Humphreys and Devlin, JJ.
26th January, 1951

Case stated by London Sessions.

The defendant, representing himself as the agent of a registered firm, orally ordered nylon stockings from manufacturers for export to Pakistan. The firm confirmed the order in writing. When the defendant called to take delivery of the stockings the manufacturers' manager asked him for a declaration required by the Knitted Goods (Manufacture and Supply) Order, 1948, as amended by the Knitted Goods (Manufacture and Supply) (Amendment) (No. 2) Order, 1948, as subsequently amended, to the effect that he would not supply the goods except for export. The defendant signed a declaration with the name of the trader constituting the firm, and took delivery of the stockings. He then handed them to another person who consigned them by train in part to York and in part to Leeds. The manufacturers' manager endorsed the date on the declaration. By art. 3A (1) of the amended Order of 1948, "A person to whom goods have been supplied against the surrender by him of any such declaration . . . shall not supply any such goods . . . except in accordance with that declaration." The defendant was convicted of contravening that regulation, and now appealed. (*Cur. adv. vult.*)

DEVLIN, J., reading the judgment of the court, said that the defendant contended that the goods had not been "supplied" to him because they had been delivered to him as the firm's agent. The definition of "supply" was very wide, but not every sort of delivery amounted to a supply under "a contract of any description." If goods were delivered to an agent of the seller whose duty was merely to collect them—in short, to a mere messenger—the goods might not be "supplied" to the messenger. It was unnecessary to express any concluded view about that, for it was plain that the defendant was much more than that. In the opinion of the court, if goods were delivered to an agent who had authority to deal with them on behalf of his principal, they were supplied as much to the agent as to the principal. There was ample material upon which quarter sessions could come to the conclusion that the defendant was an agent of that class. It was plain that he took delivery of the stockings as one clothed with authority to deal with them on behalf of the firm. Next, had the defendant himself supplied the goods to the other person? The facts relating to that point were scanty, but sufficient. The prosecution, in order to prove a supply, must prove a delivery in circumstances in which, unless otherwise explained, the natural inference was that the delivery was either pursuant to a contract or as a gift. Once the prosecution had proved that, it was for the defence to show upon what terms the goods were supplied. That was because the terms of the contract between the supplier and the third party were a matter peculiarly within the knowledge of the supplier. They (their lordships) must take it that the defendant was either unable or unwilling to give any explanation of why he had handed the stockings to the other man which quarter sessions thought sufficiently credible to form the basis of any finding of fact. In those circumstances, once it was proved that an agent in the defendant's position had handed to a third party goods which were despatched to their destination by train, the proper inference, in the absence of any other satisfactory explanation, was that they were being supplied under one or other of the forms of contract so widely set out in the definition in art. 18 (4) of the Utility Mark and Apparel and Textiles (General Provisions) Order, 1947, applied to the Order of 1948 by art. 13 (3) of that Order. As nothing was placed before the court to show whether that contract was for exportation or not, and no declaration was produced, quarter sessions were justified in their conclusion that there had been a breach of the Order of 1948. Appeal dismissed.

APPEARANCES: *J. Platts Mills* (*Temple & Co.*); *G. Pollock* (*The Solicitor, Board of Trade*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

AIDING AND ABETTING: ILLEGAL PERFORMANCE: PRESENCE OF JOURNALIST

Wilcox *v.* Jeffery

Lord Goddard, C.J., Humphreys and Devlin, JJ.
26th January, 1951

Case stated by a metropolitan magistrate.

An American saxophone player of note was granted leave, in the presence of the defendant, a journalist, to land from an aircraft at London Airport subject to the conditions imposed by the immigration officer under art. 1 (4) of the Aliens Order, 1920, that he should stay only three days and while here should take no employment, paid or unpaid. It was, to the defendant's knowledge, intended, notwithstanding the condition, that the alien should play at a jazz concert being held that evening at a London theatre. He was invited to do so, and did; and the defendant, who was present in the auditorium, obtained valuable copy, including photographs, for his magazine. He was charged with aiding and abetting the alien in committing a breach of a landing condition, contrary to art. 18 (2) of the Order of 1920. The defendant was convicted, and now appealed.

LORD GODDARD, C.J., said that the prosecutor relied on *R.* v. *Coney* (1882), 8 Q.B.D. 534, where the defendants were present at an illegal prize fight. Cave, J., there said, at p. 540: "Where presence may be entirely accidental, it is not even evidence of aiding and abetting. Where presence is *prima facie* not accidental it is evidence, but no more than evidence, for the jury." The defendant's presence at the concert here was not accidental: he paid to go, and went because he wanted to report the event. It was an illegal act on the part of the alien to play the saxophone there, and the defendant knew that. His presence was an encouragement to the alien, and he attended the concert for the purpose of making use of the performance in order to obtain copy for his magazine. It might have been entirely different had he attended and protested. If, for example, he had booed, that might have been some evidence that he was not aiding and abetting the alien. There was evidence on which the magistrate could convict.

HUMPHREYS and DEVLIN, JJ., agreed. Appeal dismissed.

APPEARANCES: *G. Rountree* (*Elliot & MacVie*); *M. Griffith-Jones* (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

A. Progress of Bills

Read First Time :—

Alkali, &c., Works Regulation Bill [H.C.] [28th February.
Export Guarantees Bill [H.C.] [28th February.

Read Second Time :—

Livestock Rearing Bill [H.C.] [27th February.
Town and Country Planning (Amendment) Bill [H.C.] [27th February.

Read Third Time :—

Tithe Act, 1936 (Amendment) Bill [H.L.] [27th February.

B. Questions

Rent Increases

The Paymaster-General (Lord MacDonald) said he was aware that municipalities owning house property were allowed to raise the rents of houses of which they were the freeholders in order to meet the greatly increased cost of repairs, whilst private owners were not so allowed. The reason was that local authorities were under certain statutory obligations in the management of their houses and in fixing rents, from which private landlords were free. For example, in allocating their houses they were obliged to give reasonable preference to persons who were occupying insanitary or overcrowded houses, who had large families or who were living under unsatisfactory housing conditions. These houses generally required subsidies from the Exchequer and from the rates to enable them to be let to persons who could not afford to pay an economic rent. [28th February.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Rent Restriction (Garages) Bill [H.C.] [27th February.

To restrict the rent for garaging cars in the Metropolitan area of London.

Read Second Time :—

West Riding County Council (General Powers) Bill [H.C.] [1st March.

In Committee :—

Overseas Resources Development Bill [H.C.] [28th February.
Reserve and Auxiliary Forces (Training) Bill [H.C.] [1st March.

B. Debates

Mr. Harold Davies moved that leave be given to bring in a **Bill to restrict the rent for garaging cars in the Metropolitan area of London.** Everyone knew that such rents were extortionate and that some garage proprietors were getting back their capital expenditure in something like two years. In the West End the West End Association of Garages made a basic minimum charge and garage proprietors generally held a monopolistic position in London.

Many owners of older cars—who paid the old horse-power tax—needed their cars for purposes of earning their livelihood. The Bill would lighten their burdens considerably. Also, thousands of cars deteriorated constantly by being left out all night—these might be able to be garaged by their owners if rents were more reasonable. He considered that use might be made of the rent tribunals to fix reasonable rents and local authorities might well be required to keep lists of garages available. The rent could be based, perhaps, on a standard rent based on the figure charged on 1st September, 1939, and the rent for new garages should be based on the average economic rent for garages in the area in 1939.

Mr. Erroll, opposing the motion, said it would have the opposite effect to that desired. The real remedy was to build more garages. The Bill would deter many people who would otherwise let their garages from doing so. Garages had in fact put their prices up less than almost any other industry, e.g., from 2s. 6d. to 3s. 6d. a night, which was very moderate considering how their rents and expenses had gone up. On a division leave was given to introduce the Bill. [27th February.

Mr. Geoffrey Hutchinson moved that leave be given to introduce a **Bill to amend s. 52 of the Town and Country Planning Act, 1947,** with reference to the assessment of compensation for the compulsory acquisition of owner-occupied dwelling-houses. As the law stood at present a public authority could not pay anything for vacant possession. Whatever might be said of the justice of this situation in relation to properties held for investment, it could produce great hardship in cases where the houses acquired were actually occupied by their owners. In such cases occupiers were being turned out and compensated at a figure which was expressly assessed on a basis insufficient to enable them to buy another house with vacant possession. These cases were not exceptional—during the four years 1946–49 the London County Council made 374 compulsory purchase orders on houses occupied by their owners, and of these orders 267 were confirmed by the Minister of Health. In one case an elderly man of nearly seventy occupying his own house with his wife, married son and two grandchildren, was offered £925 for a house estimated to be worth between £2,000 and £3,000 with vacant possession. He would just have finished paying for his house, and had been offered a council house at 24s. 6d. a week.

Opposing the motion, Mr. Ronald Williams said in matters of this kind there was the public interest to be considered and the sectional interest. The latter interest had been fully considered in the debate on the 1947 Act. Parliament had then decided that the property should be taken at its full market value, subject to a deduction, i.e., the obligation of paying scarcity value should not rest on the public authority, but that that value should be subject to a notional lease which had approximately six and a quarter years to run—a lease which would expire on 1st January, 1954. This was an improvement on the previous position and it also made provisions so that, as time went on, the prices which owner-occupiers received would increase and the matter would resolve itself under this section by 1st January, 1954.

Some owner-occupiers did not require alternative accommodation. Others could obtain alternative accommodation under the provisions of the Act, leaving a very small number of cases of the type mentioned by the proposer of the motion. To deal with these hard cases retrospective legislation would be needed. The House should oppose the proposal because the remedy proposed was much worse than the disease.

On a division the motion was defeated. [28th February.

C. Questions

Legal Aid Scheme

The Attorney-General stated that from the commencement of the Legal Aid Scheme to 31st January, 1951, 25,246 applications for legal aid had been received and of these 15,015 had been considered by the certifying committees. [26th February.

Imprisoned Persons

Mr. Chuter Ede stated that on 30th January, 1951, 16,867 men and 877 women were detained in His Majesty's prisons in England and Wales. In addition, 2,871 boys and 222 girls were detained in Borstal institutions. [26th February.

Courts Martial

Mr. Strachey said that the proceedings of all courts martial, including the summing-up of the judge advocate, normally took place in open court and were therefore available to the Press and to the public who attended the hearing. He did not think it would be proper for Army public relations officers to hand out prepared statements of the Army's view of a case, such as the recent Linsell case, even after the case had been decided. The proceedings were open to the Press and they should collect the information for themselves and publish full and balanced accounts. [27th February.

Mr. Shinwell said the question of soldiers being tried and convicted on serious charges, such as murder, on a majority verdict of four against three, or three against two officers, whereas people in civilian life could only be convicted on the unanimous verdict of twelve jurymen, had already been discussed in the debate on the Courts Martial (Appeals) Bill, and he proposed to take no action to fulfil the report of the Lewis Committee with regard to the composition of courts martials in the Army and the Royal Air Force. [28th February.

PLANNING (ADVERTISEMENT REGULATIONS)

MR. RUSSELL asked the Minister of Local Government and Planning how many of the 2,000 appeals which had been made to him since the Advertisement Regulations came into force on 1st August, 1948, had been decided in favour of local planning authorities and of advertisers, respectively; whether he would sub-divide such statistics for 1948, 1949 and 1950; and what procedure was adopted to ensure that the case of both sides was fully represented to him in such appeals and that the essential requirements of industrial advertisements were fairly balanced against considerations of amenity and safety. Mr. DALTON said that 2,116 appeals had been dealt with by the end of 1950. Of these, 662 were allowed and 1,126 dismissed. For 1948 the figures were 2 and 3 respectively; for 1949, 389 and 257; for 1950, 271 and 866. Both parties to an appeal had every opportunity to state their case either in writing, or, if necessary, at a hearing. A decision was reached in each case only after careful weighing of everything which had been said. [27th February.

STATISTICS OF TRADE ACT (PROSECUTIONS)

Mr. DEREK WALKER-SMITH asked whether the President of the Board of Trade was aware of the inconvenience caused to persons carrying on business in the provinces by his department's practice of instituting in the metropolitan courts of summary jurisdiction all proceedings in respect of offences alleged under the Statistics of Trade Act, 1947, and whether he was satisfied that there was no concurrent jurisdiction in regard to prosecutions under the Act. Mr. HAROLD WILSON stated that he was in discussion with the Attorney-General about this whole question. [1st March.

TAXICABS, LONDON (REPORT)

Mr. CHUTER EDE said that he had received an interim report from the working party on London taxicabs dealing with the limitation of the number of cabs and drivers in London and he understood that a full report dealing with the whole field of hackney carriage law was well advanced, and that the working party hoped to let him have it shortly. [1st March.

STATUTORY INSTRUMENTS

Additional Import Duties (No. 1) Order, 1951. (S.I. 1951 No. 293.)

Draft **Adult Education** (Scotland) (Residential Institutions) Grant Regulations, 1951.

Aerated Waters Wages Council (England and Wales) Wages Regulation (Holidays) Order, 1951. (S.I. 1951 No. 272.)

Boroughbridge-Thirsk Trunk Road (Boroughbridge and Dishforth) Order, 1951. (S.I. 1951 No. 299.)

Control of Iron and Steel (No. 80) Order, 1951. (S.I. 1951 No. 276.)

Copper and Zinc Prohibited Uses (Board of Trade) Order, 1951. (S.I. 1951 No. 275.)

Copper and Zinc Prohibited Uses (Ministry of Supply) Order, 1951. (S.I. 1951 No. 277.)

County and Borough Election Forms Regulations, 1951. (S.I. 1951 No. 264.)

Export of Goods (Control) (Amendment No. 3) Order, 1951. (S.I. 1951 No. 308.)

Fire Services (Conditions of Service) (Scotland) Regulations, 1951. (S.I. 1951 No. 291 (S. 10).)

Fire Services (Transfer of Pension Assets) Regulations, 1951. (S.I. 1951 No. 286.)

Food (Licensing of Retailers) (Amendment) Order, 1951. (S.I. 1951 No. 315.)

Hair, Bass and Fibre Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1951. (S.I. 1951 No. 273.)

Draft **House of Commons** (Redistribution of Seats) (No. 9) Order, 1951.

Draft House of Commons (Redistribution of Seats) (Scotland) Order, 1951.

Draft House of Commons (Redistribution of Seats) (Scotland) (No. 2) Order, 1951.

Draft House of Commons (Redistribution of Seats) (Scotland) (No. 3) Order, 1951.

Imported Softwood Prices (Revocation) Order, 1951. (S.I. 1951 No. 313.)

London-Carlisle-Glasgow-Inverness Trunk Road (Cavendish Bridge Diversion) (Amendment) Order, 1951. (S.I. 1951 No. 255.)

London County Council and Metropolitan Borough Councils Election Forms Regulations, 1951. (S.I. 1951 No. 265.)

London-Penzance Trunk Road (Church Street and other Streets, Crewkerne) Order, 1951. (S.I. 1951 No. 304.)

National Insurance (Industrial Injuries) (Mariners) Amendment Regulations, 1951. (S.I. 1951 No. 290.)

National Insurance (Industrial Injuries) (Prescribed Diseases) Amendment Regulations, 1951. (S.I. 1951 No. 305.)

National Insurance (Industrial Injuries) (Prescribed Diseases) Amendment (No. 2) Regulations, 1951. (S.I. 1951 No. 306.)

North of Scotland Hydro-Electric Board (Constructional Scheme No. 56) Confirmation Order, 1951. (S.I. 1951 No. 295 (S.12).)

Purchase Tax (No. 2) Order, 1951. (S.I. 1951 No. 271.)

Rationing (Personal Points) (Amendment) Order, 1951. (S.I. 1951 No. 288.)

Retention of Railway across Highway (Cheshire) (No. 1) Order, 1951. (S.I. 1951 No. 280.)

Rural District Council Election Rules, 1951. (S.I. 1951 No. 266.)

Safeguarding of Industries (Exemption) (No. 1) Order, 1951. (S.I. 1951 No. 294.)

Seed Potatoes (Amendment) Order, 1951. (S.I. 1951 No. 289.)

Stopping up of Highways (Dorset) (No. 1) Order, 1951. (S.I. 1951 No. 281.)

Stopping up of Highways (Flintshire) (No. 1) Order, 1951. (S.I. 1951 No. 270.)

Stopping up of Highways (Lincolnshire-Parts of Kesteven) (No. 1) Order, 1951. (S.I. 1951 No. 269.)

Stopping up of Highways (London) (No. 4) Order, 1951. (S.I. 1951 No. 268.)

Stopping up of Highways (Nottinghamshire) (No. 1) Order, 1951. (S.I. 1951 No. 282.)

Superannuation (Teaching and Local Government) (Scotland) Rules, 1951. (S.I. 1951 No. 292 (S.11).)

Urban District Council Election Rules, 1951. (S.I. 1951 No. 267.)

Utility Apparel (Gaberdine Raincoats) (Manufacture and Supply) (Amendment No. 2) Order, 1951. (S.I. 1951 No. 298.)

Utility Apparel (Maximum Prices and Charges) Order, 1951. (S.I. 1951 No. 216.)

Utility Apparel (Nurses' Uniforms) (Manufacture and Supply) (Amendment) Order, 1951. (S.I. 1951 No. 297.)

Utility Apparel (Women's and Maids' Outerwear) (Manufacture and Supply) (Amendment No. 4) Order, 1951. (S.I. 1951 No. 253.)

Utility Mark and Apparel and Textiles (General Provisions) (Amendment No. 8) Order, 1951. (S.I. 1951 No. 302.)

Utility Pram Rugs (Manufacture and Supply) (Amendment) Order, 1951. (S.I. 1951 No. 303.)

Ware Potatoes (Amendment) Order, 1951. (S.I. 1951 No. 301.)

OBITUARY

MR. W. J. COLLYER

Mr. William John Collyer, retired solicitor, formerly of Surrey Street, London, W.C.2, and Beckenham, died at Biggar, Scotland, on 24th February. He was admitted in 1891.

MR. O. W. HOLT

Mr. Oliver William Holt, solicitor, of Market Street, Manchester, died on 26th February, aged 59. He was admitted in 1913.

MR. R. E. STUART

Mr. Robert Edward Stuart, solicitor, of Stroud, died on 2nd March. He was admitted in 1883.

MR. T. H. WESTMACOTT

Mr. Thomas Horatio Westmacott, solicitor, of Harwich and Manningtree, died on 20th February, aged 74. He was admitted in 1922.

MR. J. H. WHITE

Mr. John Harrop White, Town Clerk of Mansfield from 1900 to 1923, and Mayor of Mansfield in 1924, has died at the age of 94.

MR. L. F. WILLIAMS

Mr. Leonard Frank Williams, solicitor, of Shirley, Birmingham, died recently. He was admitted in 1909.

NOTES AND NEWS

Honours and Appointments

Mr. W. G. HAMMOND has been appointed Registrar of Great Grimsby, Barton-on-Humber, Louth and Scunthorpe and Brigg County Courts, and District Registrar in the District Registry of the High Court of Justice in Great Grimsby.

Mr. S. W. PERKINS has been appointed Registrar of Boston, Sleaford, Spalding and Spilsby and Skegness County Courts, and District Registrar in the District Registry of the High Court of Justice in Boston.

Mr. W. L. MIDDLETON has been appointed Deputy Coroner, and Mr. DAVID HOWELL Assistant Deputy Coroner, of North Gloucestershire.

Mr. C. A. TAYLOR has been appointed Assistant Official Receiver for the Bankruptcy District of the County Courts of Aylesbury, Brentford, Chelmsford, Edmonton, Hertford, St. Albans, Southend and Brentwood; the Bankruptcy District of the County Courts of Croydon and Woolwich, Guildford, Kingston (Surrey) and Wandsworth; and also for the Bankruptcy District of the County Courts of Reading, Banbury, Newbury, Oxford and Windsor.

Personal Notes

Mr. W. F. Howard, solicitor, chairman of Spalding magistrates for twelve years and a magistrate for twenty-six, who retired at the end of 1950, was presented on behalf of the Spalding Bench with a portrait of himself.

Mr. J. E. G. Roberts, solicitor, of Carmarthen, was married recently to Miss Mair Estlin Owen, of Carmarthen.

Miscellaneous

In The Law Society's Preliminary Examination held from 29th January to 1st February, 44 candidates out of 98 were successful.

SOCIETIES

The annual meeting of the ISLE OF WIGHT LAW SOCIETY was held in the Newport Guildhall on 1st March. Officers were re-elected as follows: President, Mr. H. W. Lyne; Vice-President, Mr. F. W. H. Cool; Hon. Treasurer, Mr. V. Howell; Hon. Secretary, Mr. E. A. McCullagh. A resolution was passed that in sales by auction from 1st June next the conditions of sale shall not provide for the auctioneer's commission to be payable by the purchaser.

PROBATE PRACTICE

GRANTS OF ADMINISTRATION WHERE THE DECEASED DIED DOMICILED OUT OF ENGLAND

As from the 1st June, 1951, the practice whereby a person who would have been entitled to a grant of administration or of administration with will had the deceased been domiciled in England has been allowed to apply for and obtain such a grant, will be discontinued. The grant will be made by order to the person entrusted with the administration by the court of the deceased's domicile or entitled to administer by the law of the deceased's domicile unless, in special circumstances, an order to the contrary is made by the court.

Where the law of the place of the deceased's domicile does not require or provide for the obtaining of a grant or an order authorising administration of the estate or where there is for other reasons no necessity or intention of obtaining a grant or the necessary authority to administer the estate in such place of domicile, an affidavit of law will be required stating:—

(1) Whether the applicant is the person entitled to apply for a grant or order authorising administration in such place; or

(2) Whether the applicant would, without a grant, be entitled to administer the estate in such place subject to certain formalities, setting out the nature of such formalities; or

(3) Whether the applicant is entitled to administer the estate in such country, any necessary formalities having been observed.

In cases (1) and (2) above an order for the grant may be made under s. 73 of the Court of Probate Act, 1857, or s. 162 of the Supreme Court of Judicature (Consolidation) Act, 1925, as amended by s. 9 of the Administration of Justice Act, 1928, whichever is applicable, subject to affidavit evidence as to the facts. The Registrar may, in a proper case, make such an order whatever the gross value of the estate.

In case (3) the order will be for a grant to the person entitled by the law of the place of the deceased's domicile to administer the estate in that place.

H. A. DE C. PEREIRA,
Senior Registrar,
Principal Probate Registry.

1st March, 1951.

CASES REPORTED IN VOL. 95

	PAGE
Abbott *v.* London County Council	139
Alexander *v.* Springate	156
Allen *v.* Allen	45
Aris-Bainbridge *v.* Turner Manufacturing Co., Ltd.	44
Bailey, *In re*; Barrett *v.* Hyder	155
Bland-Sutton's Will Trusts, *In re*	121
British and Colonial Furniture Co., Ltd. *v.* William McIlroy, Ltd.	75
Brock *v.* Richards	75
Clifford *v.* Charles H. Challen & Son, Ltd.	119
Combe *v.* Combe	30
Conway *v.* George Wimpey & Co., Ltd. (No. 2)	156
Coral *v.* Kleyman	139
Coulthurst, *In re*; Coutts & Co. *v.* Coulthurst	29
Cummings *v.* London Bullion Co., Ltd.	157
Daysh, decd., *In re*; Dale *v.* Duke of Richmond and Gordon	108
Downie *v.* Turner	60
Dowse, decd., *In re*; Dowse *v.* Dowse	107
Ferguson *v.* Weaving	90
Garforth-Bles *v.* Garforth-Bles	140
Ginger, deceased, *In re*	76
Girls' Public Day School Trust, Ltd., *In re*	76
Gould *v.* Minister of National Insurance	45
Halpern *v.* Halpern	123
Harrowby (Earl) *v.* Snelson	108
Hawks *v.* McArthur	29
Heil *v.* Hedges	140
Higham *v.* Havant and Waterloo Urban District Council	30
Hinckley Urban District Council *v.* West Midlands Gas Board	89
Hosegood *v.* Moodie	137
Howard *v.* Bickford Tool Co., Ltd	44
Howkins *v.* Jardine	75
Hunter, *In re*; Lloyds Bank *v.* Mistress and Governors of Girton College, Cambridge	61
Hunter *v.* Towers	62
James *v.* Thomas H. Kent, Ltd.	29
Jaworski *v.* Institution of Polish Engineers in Great Britain, Ltd.	89
Jelliff *v.* Harrington	108
Kemsley *v.* Foot	120
Koh Sunkersette Obu *v.* A. Strauss & Co., Ltd.	137
Langdon *v.* Horton	89
Lee *v.* Sherman's Pools, Ltd.	14
Mills *v.* Bryce	13
Moore (Percy G.), Ltd. *v.* Stretch	89
Murray *v.* Harringay Arena, Ltd.	123
Patel *v.* Willis	157
Portman Building Society *v.* Young	61
Preston-Jones *v.* Preston-Jones	13
R. *v.* Albury	91
R. *v.* Birmingham (West), etc., Rent Tribunal	122
R. *v.* City of London, etc., Rent Tribunal; *ex parte* Honig	122
R. *v.* Cohen	124
R. *v.* Faithful	30
R. *v.* Franks	45
R. *v.* London Sessions; *ex parte* Beaumont	123
R. *v.* London Sessions; *ex parte* Rogers	61
R. *v.* Northumberland Compensation Appeal Tribunal; *ex parte* Shaw	76
R. *v.* Paddington North and St. Marylebone Rent Tribunal; *ex parte* Holt	90
R. *v.* Sidmouth Rent Tribunal; *ex parte* Sellek	122
R. *v.* Vallett	91
R.M.R. Housing Society, Ltd. *v.* Combs	44
Read's Trustee in Bankruptcy *v.* Smith	156
Reading *v.* A.-G.	155
Regional Properties, Ltd. *v.* Frankenschwerth	106
Regor Estates, Ltd. *v.* Wright	106
Robertson *v.* Rosenberg	138
Roe *v.* Hemmings	77
Rose *v.* Matt	62
St. David's College, Lampeter *v.* Ministry of Education	137
Shackleton *v.* Greenhalgh	60
Smallwood, deceased, *In re*; Smallwood *v.* Martin's Bank, Ltd.	108
Smith's Lease, *In re*; Smith *v.* Richards	121
Stagg *v.* Brickett	14
T. *v.* P.	61
T. *v.* T.	91
Tinkham *v.* Perry	107
Tinsley *v.* Dudley	106
Whitehouse, *In re*	138
Wigley *v.* Wigley	60
Wilcox *v.* Jeffery	157
Williams *v.* Linnitt	120
Wokingham Fire Brigade Trusts, *In re*; Martin *v.* Hawkins	137
Wray, decd., *In re*; Wray *v.* Wray	107
Wrottesley *v.* Regent Street Florida Restaurant, Ltd.	139

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